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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/451,580 | 11/30/1999 | DANIEL L. POOLE | 3339-PA13 | 9240 |
| 757 | 7590 | 10/29/2004 | EXAMINER | |
| BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610 | | | SMITH, JAMES G | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3723 | |

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/451,580 | POOLE ET AL. |
| | Examiner | Art Unit |
| | James G. Smith | 3723 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 December 0101.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-6,8-11,13-15,17,18,20-27,29-33 and 39-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4-6,8-11,13-15,17,18,20-27,29-33 and 39-41 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4, 18, 20, 21, 24, 25, 30, 31 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie (697) or Bothum in view of any of Smoyak et. al., Igarashi or Noniewicz et. al..

Any of Stratman, Sarvie (697) or Bothum shows the claimed invention except for the use of a spring secured around the pivot of a pliers type tool to bias the jaws open. Any of Smoyak et. al., Igarashi or Noniewicz et. al. suggests that a pliers type of tool can have a spring around the pivot member in order to bias the jaws into either an open or closed position, as desired. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie (697) or Bothum by using a spring carried around the pivot member because any of Smoyak et. al., Igarashi or Noniewicz et. al. suggests the use of such a spring for the purpose of biasing the jaws into either an open or closed position as desired.

3. Claims 5, 9, 10, 14, 15, 17, 22, 23, 26, 27, 29, 32, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie (697) or Bothum in view of any of Smoyak et. al., Igarashi or Noniewicz et. al. as applied to claims 1, 2, 4, 18, 20, 21, 24, 25, 30, 31 and 41 above, and further in view of Wolff et. al..

Any of Stratman, Sarvie(697) or Bothum shows the claimed invention except for the use of a plastic material of construction. Wolff et. al. suggests that a pliers type of clamp can be made of a plastic material to allow it to be flexible. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie(697) or Bothum by making any of them of a plastic material to make them more flexible because Wolff et. al. suggests the use of such a material in the manufacture of clamps or pliers for allowing for a greater degree of flexibility in the pliers type tool.

4. Claims 6, 8, 11, 13 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie(697) or Bothum in view of any of Smoyak et. al., Igarashi or Noniewicz et. al. and Wolff et. al. as applied to claims 5, 9, 10, 14, 15, 17, 22, 23, 26, 27, 29, 32, 39 and 40 above, and further in view of any of Hersey, McGuckin or Reiter.

Any of Stratman, Sarvie(697) or Bothum, as modified by Wolff et. al., shows the claimed invention except for the use of a spring biased jaw portion. Any of Hersey, McGuckin or Reiter suggests that a clamp or pliers can have such a spring biased jaw portion to provide the tool with more flexibility. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie(697) or Bothum by using a spring to bias a jaw portion because any of Hersey, McGuckin or Reiter suggests the use of such a spring to bias a jaw portion on the same type of tool to provide the tool with more flexibility.

Response to Arguments

5. Applicant's arguments filed 12 October 2004 have been fully considered but they are not persuasive.

Art Unit: 3723

Applicant has argued that none of the primary references show a the use of a spring around the pivot to bias the jaws into an open position, however the newly cited art to Smoyak et. al., Igarashi and Noniewicz et. al. all suggest that in pliers type tools, using a spring around the pivot for the express purpose of biasing the jaws into either an open or closed position is well known and to so modify the primary references is obvious in view of this suggestion.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Smith whose telephone number is 703-308-1746. The examiner can normally be reached on M-Th (7:05- 4:35) Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 703-308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James G. Smith
Primary Examiner
Art Unit 3723

jgs
10/28/04